

TRIAL STATEMENT

In the Provincial Court of British Columbia (Small Claims Court)



REGISTRY FILE NUMBER
ROB-P-C 1138247
REGISTRY LOCATION
Robson Square

Fill in the registry file number and location as shown on the Notice of Claim.

In the case between:

Cavliere Financial & Management Inc

CLAIMANT(S)

and

Fill in the names of the parties, copying them from the Notice of Claim and the Third Party Notice, if applicable.

Imogo Mobile Technologies Corp.

DEFENDANT(S)

and

THIRD PARTY

This Trial Statement should contain all of the facts that you wish the court to consider. You must file it with the court at least 14 days before your trial conference or simplified trial. You must serve the other parties with a copy no less than 7 days before the hearing.

Collect and review all of the facts and evidence you intend to present to the court at trial.

A. Statement of Facts

Attach a summary of the facts in numbered paragraphs. Set out the facts in the order that events happened (typed if possible, and not more than 3 pages in length).

B. Amount Claimed, Disputed or Counterclaimed

Attach a document showing the amount you are claiming, disputing or counterclaiming and how the amount is calculated.

C. Documents

Attach copies of all relevant documents (including contracts, cheques, repair estimates, invoices, photographs, etc.).

D. Witnesses

Attach a list of the witnesses (including experts) who will attend the trial. Briefly state what each witness will say under oath.

Organize your documents and attach them directly to this form.


You may not be allowed to rely on a document or other information as evidence in court unless you have attached it to this Trial Statement and filed and served it in accordance with the Small Claims Rules.

Date and sign the form.

I certify that these facts are true:

26-Jun-2012

Date


Signature of party

John Douglas Shields, Lawyer for Defendant

Name of party (and title if Authorized Signing Officer).

Indicate which party is filing this Trial Statement

CLAIMANT ☐ DEFENDANT ☒ THIRD PARTY ☐

Registry File Number
ROB-P-C-1138247

Location
Robson Square

Trial Statement

Cavliere Financial & Management Inc.

Claimants

Imogo Mobile Technologies Corp.

Defendants

- A. Statement of Facts
- B. Amount Claimed, Disputed or Counterclaimed
- C. Documents
- D. Witnesses

A. Statement of Facts

1. All experienced business people and especially a seasoned CGA such as Renato Cavaliere, claimant's principal (referred to as "Renato") know that technology startups are fraught with a myriad of challenges, issues and financial constraints. What is most important and salient to this case is that Renato was well aware that the company had financial issues and was seeking investment. At all points in time I made decisions on what I thought was in the best interest of the company and the shareholders. At no point in time did I utter or make any false or misleading statements to Renato.
2. From the outset of the relationship, Renato was aware that I was experiencing challenges as on April 12th 2011 he asked if I needed help, to which I responded yes.
3. From the outset of the relationship with Renato there was full and complete transparency and disclosure of all the financial problems and legal issues that the Company was facing.

4. Contrary to Renato's claim that it was after he started working he "began to hear about", in fact it was prior to formalizing a contractual relationship, Renato met with myself and our acting CFO Ken Maude on April 25 2011 where we described in detail the current state of the company and all the financial, legal issues that company was facing.
5. Renato assured both of Ken and Myself that he had faced similar challenges in past businesses and that he was experienced in the difficult situations and was completely confident that he could assist the company. He was fully aware that the company is a fledging start-up and had financial problems and did not have the resources to pay for expensive consulting services.
6. Renato repeatedly assured me and Ken Maude that he could deal with all the issue facing the company as he had founded, operated and ran a technology company and he would restructure the company and reduce the monthly operating and overheads.
7. He stated that he understood the financial constraints and internal problems that the company was facing and that he would be able to assist the company deal with these issues.
8. The relationship was commenced on the premise of restructuring and building a company to ensure profitability. After meeting with Renato on April 27th 2011 I followed up with Renato and sent him the objectives and goals:

1. 30/60/90 action plan
2. Priority: Sales / revenues
3. Objective: 90 Days: 4,000 seats activated
4. Restructure and reorganize the team
5. Procedures and process documentation
6. Back up plans; fail safe contingencies
7. The team to take individual ownership and accountability with their responsibilities
8. Roadmap with milestones and deliverables
9. Increase performance and output; minimize meetings
10. Issues; we need know and document so we can implement solutions
11. Do a due diligence / deficiency analysis - take an inventory of our HR assets, what are missing?
12. Contact and follow up with all the sales prospects and investors
13. Leverage existing relationships
14. Government grants, student programs

9. Renato stated and repeatedly assured the administration, staff, contractors and investors that the strategic plan to break-even within 90 days was realistic achievable.
10. I believe that the most important and salient fact is that at all times when I was discussing the contract services agreement with Renato and his salary expectations, it was predicated on the company achieving breakeven.
11. With regard to expenses, the mutual and verbal understanding that was between Renato and myself was that for out of pocket expenses related to company business and travel would be covered.
12. The car allowance of \$900 per month was never discussed; during Renato's tenure he never submitted a claim for expenses for his car or mobile phone.
13. It is unreasonable to charge the company the full amount of his mobile phone when he was only working 3 days per week and also stated that he had other clients.
14. Renato charged HST tax but never submitted or notified the company of his HST registration number on his invoices.
15. The claimant company was paid a total including HST \$66,498.40.
16. On April 30th 2011, we exchanged emails where Renato referenced and acknowledged his understanding of the objectives and job description to which he agreed to:
 - Base - \$10.5K/M-\$13.5K /M for the next 3 months.
 - Parking and cell- as expensed.
 - Auto allowance - give me something fair here as I expect to be out and about with my own car - unless u have a smart car for me .
 - Measurable Incentives- \$Blank K per month converted to equity only if 'you' think I have achieved the 30/60/90 day objectives are met. (I call this effort based on measurable objectives and could be agreed upon like your list-not sales stuff)
 - Through something in for top line sales growth to keep me focused on the top line goal. You can decide how to pay this and how much.
 - We review everything in 3 months to make sure we are both happy with each other.
 - Renato never had an HST registration number on his invoice
17. On May 4th 2011 there was a major incident with a shareholder Elizabeth Nash and her Father Don Nash where they made false and misleading claims against myself and tried to take over the company. I involved Renato and disclosed the situation and we met with our CFO Ken Maude; it was agreed that Renato would undertake to do an independent financial audit; he brought in his own auditor and we gave him full and total access to all the books and records.

18. Upon Renato's review he concluded that there was no wrong doing and we proceeded with re-building the company.
19. Contrary to Renato's claim, Renato was fully aware of the problems and legal issues with the former President David Long and dissident shareholders Elizabeth Walker and her father Don Nash. Renato was present and assisted in negotiations in meetings with Don Nash to work out a settlement. Renato spoke with our corporate lawyer Mike Raven regarding the issues and claims by the shareholders.
20. Renato was fully aware that the only means to funding the company was through investor private placements and increasing revenues. Renato was present and participated in meetings with key investors to secure operating capital; Don Nash, Paul Beckmann, and Chris Tidd. At this meeting, Renato stated that he had reviewed the company's records and financials and he was confident that the company would achieve break-even within 90 days. When meeting with the primary investor Ken Mitchell, Renato reassured Mr. Mitchell that he had reviewed the company's records and financials and he was confident that the company would achieve break-even within 90 days.
 - a) During the claimant's tenure it never delivered any introductions to new investors
 - b) The claimant never delivered any new clients.
 - c) The claimant never delivered a complete business plan or executive summary .
21. On November 01 2011 when I met with him regarding his continuing on for another 90 days, he told me that it would be on the new amount of \$20,000 per month; he was reminded that the company was not in the financial position and he further agreed that the understanding of \$20,000 was predicated on the company achieving break-even which he acknowledged that he remembered, agreed, shook hands with me and took the \$10,000.
22. On the November 04, 2011 - Monday, he informed that he had thought about our conversation and he decided to change his mind and that he did not want to work for the company. He terminated his agreements and broke the verbal agreement and the condition of giving him his check.
23. As is our security protocol when an employee or contractor quits, that we turn off the individual's access to the company's portal.

24. On the evening of Nov 04, 2011 our network logs indicated that he repeatedly tried to gain access to his account. He was able to gain access and used a backend password reset application and reset his password and gained access to the portal; he deleted, moved and copied company files.
25. Renato violated confidentiality both personally with Stewart Irvine and the Company; On Nov 17, 2011 he met with and collaborated with David Long and Elizabeth Walker after he knew we there are legal issues with both parties.
26. He was immediately put the invoices into collection; I attempted many times to meet with him to figure and work out a solution but he would not meet with me and instead chose to put the company into collections.
27. The claimant had a defendant employee build a personal website on company time and payroll; Overall 35 hours on the project (including Logo, Images preparation, CMS Install-setup and the Website) at \$150 per hour that would be \$5250 - - I had no knowledge of this <http://www.contractexecutive.com/> .
28. There were a number of responsibilities and tasks that were commenced but never completed:
- a) Renato never followed up with our deal / MOU with Vsoon Beijing and we lost the deal
 - b) Renato never followed through and completed setting up and migrating the company's books and records onto accounting system
 - c) Renato was responsible for the migration to a new operating system; it was poorly executed as none of our clients were informed, caused the company serious problems.
 - d) After Nov 04, 2011, and subsequent to putting the company into collections, Renato made numerous calls to employees Will Ryan and Abid Shaw which caused dissention within our team. The employees told me that felt uncomfortable that Renato was calling them and prying for information
 - e) Renato has contacted and has spoken with clients and made disparaging comments about the company which has tarnished and caused loss of business.
 - f) Renato has also contacted a number of individuals he had been introduced to during his tenure
 - g) Our call logs as referenced in Appendix B clearly show his calls to the owner of a client Need a Little Help accounting bookkeeping services; see telephone logs
 - h) The feedback from some clients and strategic relationships that Renato stated that Imogo will fail.; Isaac Kendal, Ron Enns; VP Cellcom, Geoff Beulens; Imogo reseller
 - i) Renato never delivered one independent sale or client;
 - j) Renato never followed through or worked with the sales agent Dario, which ended up costing the company time and money
 - k) Renegotiating employee and staff contracts

- l) Not keeping track of the staffs progress
- m) Didn't have an up-to-date list of Accounts receivable and accounts payable
- n) Not following through and getting money owed

B. Amount Disputed

The entire amount claimed is disputed.

C. Documents

The defendant relies on all documents attached to the claimant's trial brief.

The defendant relies on copies of emails and documents appended as Appendix A and B to this document.

The defendant relies on a document "Calls from Renato to Michael", and various emails.

D. Witnesses

Stewart Irvine, principal of the defendant, who will give evidence as to all aspects of this matter.

The defendant also intends to call Terry Severyn and Ken Maude.

APPENDIX A

APRIL 12 2011

Stewart-

Do you need some executive help?

I move really fast. :).

RC

-----Original Message-----

From: Stewart Irvine

To: Renato A Cavaliere

Subject: RE: Follow up

Sent: Apr 12, 2011 7:00 PM

Hi Renato;

My apologies for the delay, I'm working on a draft agreement for you as we speak.

-----Original Message-----

From: Renato Cavaliere [<mailto:renato@contractexecutive.com>]

Sent: Tuesday, April 12, 2011 6:36 PM

To: Stewart Irvine

Subject: Follow up

Stewart-

Just checking in.

Renato

Sent from my BlackBerry device on the Rogers Wireless Network

April 25 2011

Ken-

Thanks for taking the time to meet with me today.

I enjoyed our conversation and look forward to my next meeting with Stewart.

Regards-

Renato

Sent from my BlackBerry device on the Rogers Wireless Network

April 27 2012

Stewart....

Wow.. I am impressed..

I have never had someone lay out a plan as I usually need to do all the leg work and figure things out on my own. You make the execution much easier.

I will convert your list into an execution document (road map) and we can modify it with the successes and failures.

With regards to the expectations between us, if we clearly communicate and use this document as our own scorecard, we should never feel that each of our expectations are not met.

What a great opportunity to make a difference in the lives of many people..

Since I am committed a few days a week as discussed, we just need to figure out the time logistics.

B TW- Where is the foosball table – You can be a real Tech company if you don't have one.. ☺

Best personal regards,
Renato Cavaliere
www.contractexecutive.com
o.604.634.3759
c. 778.999.4357

And don't forget – "You drive the road; don't let the road drive you"

From: Stewart Irvine [<mailto:stewart@imogo.com>]
Sent: Wednesday, April 27, 2011 7:38 PM
To: 'renato@contractexecutive.com'
Subject: Follow up

Hi Renato:

I'm looking forward to moving forward and you joining our team. We have an amazing team and each one is vital to the company and our success. As I mentioned to you, I'm aware that there are issues and concerns that have been voiced by various members of the team that need to be addressed; with you coming on board, I want to take this opportunity to restructure and reorganize from the top down. My goal is to foster a productive and harmonious environment that is built on a culture of integrity, honesty and pride. Most important to me is to ensure that you and I have clear expectations of each other.

Attached is the sales forecast that Steve and Dave produced and no, Steve did not show up today, sick at home, but my spider sense tells me that something is up. I've also attached the marketing and PR decks for you to review. I have a biz plan which is being updated and will get you a copy tomorrow

The tasks and issue that need to addressed are: (in no particular order of importance)
15. 30/60/90 action plan

16. Priority: Sales / revenues
17. Objective: 90 Days: 4,000 seats activated
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22. Roadmap with milestones and deliverables
23. Increase performance and output; minimize meetings
24. Issues; we need know and document so we can implement solutions
25. Do a due diligence / deficiency analysis - take an inventory of our HR assets, what are missing?
26. Contact and follow up with all the sales prospects and investors
27. Leverage existing relationships
28. Government grants, student programs

Marketing plan

1. Website no1 priority
2. Branding
3. PR
4. There is not a sales presentation
5. Update the corporate introduction
6. Sales training and related support materials

Please feel free to come to the office earlier and meet with the team so you can get to know them; I've appraised them as to what is going on and they are eager to meet with you and get to know you.

We have all the elements in place to succeed.....let's rock

Cheers,

Stewart

April 30 2011

Stewart-

Been thinking a lot about a framework for both of us.

You have done lots to get things to this stage and a new guy should never forget that.

I on the other hand am in a unique situation right now so I have some flexibility..

Here it is...

Base - \$10.5K/M-\$13.5K /M for the next 3 months.

Parking and cell- as expensed.

Auto allowance - give me something fair here as I expect to be out and about with my own car - unless u have a smart car for me - lol.

Measurable Incentives- \$Blank K per month converted to equity only if 'you' think I have achieved the 30/60/90 day objectives are met. (I call this effort based on measurable objectives and could be agreed upon like your list-not sales stuff)

Through something in for top line sales growth to keep me focused on the top line goal. You can decide how to pay this and how much.

We review everything in 3 months to make sure we are both happy with each other.

Start date - Monday

Treat it like a contract.

Let's go build a company.

Renato

-----Original Message-----

From: Stewart Irvine

To: Renato A Cavaliere

Subject: Move forward

Sent: Apr 29, 2011 7:27 AM

I know we are moving fast and I appreciate your faith and trust in me; I feel its important that we structure an agreement so we have a framework in place.

Sent by the Imogo BlackBerry SecuredMail Sent from my BlackBerry device on the Rogers Wireless Network

May 11 2011

See me tomorrow on this please..

r

Renato Cavaliere | President

Imogo Mobile Technologies Corp

renato@imogo.com

Office | 604.638.8186 Xtn 1007

Fax | 604.638.8187

From: Will Ryan

Sent: Wednesday, May 11, 2011 1:44 PM

To: Renato Cavaliere; Stewart Irvine

Cc: Grace Fleming

Subject: FW: Invoicing...

Hi Guys,

Grace and I are a little confused on where we sit on invoicing now. Can you let us know what the plan is? Next invoices aren't until the 16th, so we have a bit of time to sort it out.

Thanks,

Will

From: Grace Fleming
Sent: Wednesday, May 11, 2011 9:08 AM
To: Will Ryan
Subject: RE: Invoicing...

As far as I was aware QuickBooks was still in the set up process? But I do know that their was mention of using the quickbooks for invoicing too so I guess then it would fall to me.....?

I will check with Harvey when he is in about the status of it all.

Grace

From: Will Ryan
Sent: Tuesday, May 10, 2011 4:53 PM
To: Grace Fleming
Subject: Invoicing...

Hey Grace,

Now that QuickBooks is set up, who's taking care of invoicing? I have some stuff I've been holding on to for the next billing cycle for certain organizations (See attachments).

Cheers,

Will Ryan | Account Manager

will@imogo.com

Tel: 604-638-8186 ext. 1009

LinkedIn: <http://ca.linkedin.com/in/willryan>

May 12 2011

Hi Ken-

I trust you are well.

Sorry for not updating you quicker but we have been busy putting some things in place.

Very hi level- here are some accomplishments (top 5):

1) 30/60/90 day plan done with a mission board up for all staff to see - 10 major goals we want to accomplish during this period.

2) Stewart and Renato met Monday AM to have a Sales strategy meeting and outline key overall goals with defined action plans related to sales

3) Interviewed potential VP of sales

4) Interviewed potential web strategy guy

5) Various sales/alliance meetings.

We can give you more detail in a more formal document if you like but this should give you a sense of what's going on.

I should mention that the staff have embraced this move and are on board.

Look forward to meeting you soon.

Bpr
Renato

Appendix B

RENATO CAVALIER 7789994357
500 2012-04-23 14:03:31
1651 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-04-23 12:35:01
35 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-04-19 15:36:15
742 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-04-19 13:09:31
37 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-04-19 10:44:04
45 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-04-18 14:44:07
333 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-03-21 17:33:44
239 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-03-21 15:33:06
26 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-02-27 11:21:35
210 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-02-20 13:57:00
463 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-02-06 11:21:12
86 Normal Clearing

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500 2012-02-06 11:20:57
2 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-02-02 12:37:35
89 Normal Clearing

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57 Normal Clearing

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88 Normal Clearing

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500 2012-01-27 13:00:28
321 Normal Clearing

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500 2012-01-27 12:57:38
100 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-01-27 08:15:37
59 Normal Clearing

RENATO CAVALIER 7789994357

500 2012-01-26 15:11:12
103 Normal Clearing

RENATO CAVALIER 7789994357
500 2012-01-23 11:59:13
762 Normal Clearing